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**STP Nuclear Operating Company and International Brotherhood of Electrical Workers, Local Union 66.** Case 16–CA–223678

March 5, 2019

**DECISION AND ORDER**

BY MEMBERS MCFERRAN, KAPLAN AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on July 16, 2018, by the International Brotherhood of Electrical Workers, Local Union 66 (the Union), the General Counsel issued the complaint on July 18, 2018, alleging that STP Nuclear Operating Company (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain with it following the Union’s certification in Case 16–RC–220802. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 3, 2018, the General Counsel filed a motion for summary judgment. On December 14, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an opposition to the General Counsel’s motion for summary judgment, a response to the Board’s Notice to Show Cause, and a cross-motion for summary judgment. The General Counsel filed a reply to the response to the Notice to Show Cause

<sup>1</sup> In its answer, the Respondent denies the allegation in complaint par. 9 that, since July 10, 2018, the Respondent has failed to recognize and bargain with the Union. In addition, the Respondent only partially admits the allegation in complaint par. 8 concerning the Union’s request for recognition, stating in its answer only that it received and exchanged communications with a representative of the Union on certain dates in July 2018. However, the Respondent does not contend that it has bargained with the Union or that its denial of complaint par. 9 raises a genuine issue of material fact warranting a hearing. Further, it does not contest the authenticity of the emails attached to the General Counsel’s motion, which include the Union’s statement that it is ready to start negotiations regarding the petitioned-for employees, as well as an email response from the Respondent declining to provide potential dates for negotiations with the Union regarding the newly certified unit, based on its position that the maintenance supervisors are statutory supervisors. Rather, in its opposition to the motion for summary judgment, the Respondent makes clear that it is continuing to contest the appropriateness of the unit. Accordingly, for the reasons described above, we conclude that the

and an opposition to the cross-motion for summary judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent denies its refusal to bargain, and contests the validity of the Union’s certification on the basis of its contention, raised and rejected in the underlying representation proceeding, that the certification is inappropriate because employees in the newly certified unit are statutory supervisors.<sup>1</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the motion for summary judgment and deny the Respondent’s cross-motion for summary judgment and its request that the complaint be dismissed.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a Texas corporation with an office and place of business in Wadsworth, Texas (the Wadsworth facility), and has been engaged in the business of electrical generation.

In conducting its operations during the 12-month period ending on July 17, 2018, the Respondent purchased and

Respondent’s denial of complaint par. 9 and partial denial of par. 8 do not raise any issue warranting a hearing.

The Respondent also denies par. 5 of the complaint, which sets forth the appropriate unit. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent’s denial of the appropriateness of the unit does not raise any litigable issue in this proceeding. The Respondent additionally argues as an affirmative defense that the complaint fails to state a claim under the Act upon which relief can be granted. The Respondent has not offered any explanation or evidence to support this bare assertion, beyond its previously litigated contention that the certification is inappropriate because the petitioned-for employees are statutory supervisors. Therefore, we find that this affirmative defense is insufficient to warrant denial of the General Counsel’s motion for summary judgment in this proceeding. See, e.g., *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018) (citing cases).

received at its Wadsworth facility goods valued in excess of \$50,000 directly from points outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

At all material times Shawn Flaherty, Manager, External Communications and Governmental Affairs, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

Following a self-determination election held on June 26, 2018, the Regional Director for Region 16 issued a certification of representative<sup>2</sup> on July 5, 2018, as corrected on July 12, 2018, certifying that the Union is the exclusive collective-bargaining representative of all full-time and regular part-time maintenance supervisors at the Wadsworth facility as part of the existing unit of technicians, electricians, mechanics, reactor operators, and work week managers, among others, that it currently represents.

Based on this certification, the following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, as part of the existing unit of all Radiation Protection Technicians, Performance Technicians, Chemistry Technicians, Material Technicians, Metrology Technicians, Maintenance Planners, Operation Support Procedure Writers, Work Week Schedulers, Electricians, Mechanics, I&C Technicians, Material Handlers, Head Material Handlers, Head Operators, Head Radiation Protection Technicians, Head Performance Technicians, Reactor Operators (RO), Work Control Specialists, Work Week Managers, RO/SRO License Operator Trainees, Senior Reactor Board Operators, Unit Supervisors and Senior Reactor Operator (SRO) Instructors, and Access and Access Coordinators employed at the Respondent's Wadsworth facility:

**INCLUDED:** All full-time and regular part-time maintenance supervisors and coordinators, mechanical supervisors, electrical supervisors, I&C supervisors, integrated maintenance supervisors, facilities supervisors, and metrology and radiology laboratory supervisors employed in the Maintenance Operating Facility (MOF)

and its surrounding shops, Nuclear Support Center (NSC), at the Employer's Wadsworth, Texas facility.

**EXCLUDED:** All other employees, office clerical employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees, including the employees in the voting group, under Section 9(a) of the Act.

### B. *Refusal to Bargain*

On July 10, 2018, by electronic mail, the Union requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit as part of the existing bargaining unit. Since about July 10, 2018, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing, since about July 10, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of maintenance supervisors as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.<sup>3</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, STP Nuclear Operating Company, Wadsworth, Texas, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Electrical Workers, Local Union 66 (the Union), as the exclusive collective-bargaining representative of the maintenance supervisors in the bargaining unit.

<sup>2</sup> By unpublished Order dated January 31, 2019, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election.

<sup>3</sup> The General Counsel's motion requests that the Board extend the certification year pursuant to the Board's decision in *Mar-Jac Poultry*

*Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), *aff'd*, 348 F.3d 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997) (citing cases).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit, as part of the existing unit of all Radiation Protection Technicians, Performance Technicians, Chemistry Technicians, Material Technicians, Metrology Technicians, Maintenance Planners, Operation Support Procedure Writers, Work Week Schedulers, Electricians, Mechanics, I&C Technicians, Material Handlers, Head Material Handlers, Head Operators, Head Radiation Protection Technicians, Head Performance Technicians, Reactor Operators (RO), Work Control Specialists, Work Week Managers, RO/SRO License Operator Trainees, Senior Reactor Board Operators, Unit Supervisors and Senior Reactor Operator (SRO) Instructors, and Access and Access Coordinators at the Respondent's Wadsworth facility, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time maintenance supervisors and coordinators, mechanical supervisors, electrical supervisors, I&C supervisors, integrated maintenance supervisors, facilities supervisors, and metrology and radiology laboratory supervisors employed in the Maintenance Operating Facility (MOF) and its surrounding shops, Nuclear Support Center (NSC), at the Employer's Wadsworth, Texas facility.

EXCLUDED: All other employees, office clerical employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Wadsworth, Texas, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 5, 2019

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Electrical Workers, Local Union 66 (the Union) as the exclusive collective-bargaining representative of our maintenance supervisors in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate unit, as part of the existing unit of all Radiation Protection Technicians, Performance Technicians, Chemistry Technicians, Material Technicians, Metrology Technicians, Maintenance Planners, Operation Support Procedure Writers, Work Week Schedulers, Electricians, Mechanics, I&C Technicians, Material Handlers, Head Material Handlers, Head Operators, Head Radiation Protection Technicians, Head Performance Technicians, Reactor Operators (RO), Work Control Specialists, Work Week Managers, RO/SRO License Operator Trainees, Senior Reactor Board Operators, Unit Supervisors and Senior Reactor Operator (SRO) Instructors, and Access and Access Coordinators at the Respondent's Wadsworth facility:

INCLUDED: All full-time and regular part-time maintenance supervisors and coordinators, mechanical

supervisors, electrical supervisors, I&C supervisors, integrated maintenance supervisors, facilities supervisors, and metrology and radiology laboratory supervisors employed in the Maintenance Operating Facility (MOF) and its surrounding shops, Nuclear Support Center (NSC), at the Employer's Wadsworth, Texas facility.

EXCLUDED: All other employees, office clerical employees, guards, and supervisors as defined in the Act.

STP NUCLEAR OPERATING CO.

The Board's decision can be found at [www.nlrb.gov/case/16-CA-223678](http://www.nlrb.gov/case/16-CA-223678) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

